

Judge Timothy W. Dore
Chapter 11
Hearing Date: December 23, 2016
Hearing Time: 9:30 a.m.
Hearing Location: Seattle
Response Due Date: December 17, 2016

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re
LODGE HOLDINGS COMPANY,

Debtor.

NO. 16-15814

STATE OF WASHINGTON
MOTION TO APPOINT
CHAPTER 11 TRUSTEE OR
DISMISS.

COMES NOW the State of Washington, Departments of Revenue, Labor & Industries and Employment Security, by and through the undersigned attorney, and moves the Court for an order pursuant to 11 U.S.C. § 1112(b) dismissing or appointing a Trustee for the following grounds:

1. Prior Bankruptcies Involving Roten and Current Bankruptcy Counsel. Current bankruptcy counsel filed In re Wrought Corp. in this court in 2009 as a Chapter 11 under Cause No. 09-14980. It quickly dismissed for cause. *Exhibit 1*. The principals of this company were Shawn and Elizabeth Roten. They filed for Chapter 11 in 2009 with current bankruptcy counsel under Cause No. 09-12202. The case quickly converted to Chapter 7. *Exhibit 2*. The IRS filed a claim in that case for \$96,458.67. *Exhibit 3*. The current balance of that account is not known, but it will increase dramatically with this current case filing. The Department of Revenue filed a claim for approximately \$300,000 of unpaid sales tax attributable to *Wrought*. *Exhibit 4*. The declaration of Doug Houghton for Revenue demonstrates that Shawn Roten has paid only about \$500 a month on this debt and that it currently exceeds \$500,000 with penalties.

2. Tax Abuse In The Current Case. Per the current tax records, the collective tax liability for all separate corporations of this holding company exceeds \$441,000. Per Petition information, there are ten separate entities and locations. *Exhibit 5*. The debtor believes that State tax liability actually

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1 exceed this sum at \$1,108,000. *Exhibit 6*. In this same exhibit, the IRS is listed with a debt of \$1.95
2 million.

3 3. Given the prior tax history of a Roten-controlled entity and sheer magnitude of the debt
4 herein, it is fair to conclude that Roten's filing demonstrates a clear and concerted pattern of tax
5 abuse.

6 4. Burning Through Prior Capital and/or Borrowings. Because the case is in its infancy it is
7 impossible to determine whether some creditors are equity investors secured by assets or purely
8 creditors. But it would appear the debtor capitalized with over \$1.82 million in borrowings from
9 three entities listed in *Exhibit 6*.

10 5. Unexplained Conduct With Creation of A Corporate Shell Just Prior To Filing. Just prior
11 to filing Roten created a new corporation—"Toasted Bar & Grilled LLC"—at a location that appears
12 to approximate the current Lodge location in Mukilteo. *Exhibit 7*. It is not clear what was intended
13 with this action.

14 6. Debtor's Tout Their Prior Experience In Contracting. In *Exhibit 8*, the official web page
15 for Lodge restaurants, debtor's tout their prior "experience in the construction industry" and opined
16 that "beer sells better than houses". Apparently, using other people's money, they were wrong. Or
17 perhaps the prior failure and accumulated debt did not provide the knowledge they needed.

18 7. Other People's Money. Ultimately, debtor failed, using other people's money, including a
19 large "involuntary" sum from governmental entities.

20 8. No Feasible Plan. Given the strictures of 11 U.S.C. Sec.1129(a)(9)(C) no plan can be
21 confirmed herein. Either Department of Revenue or the IRS could swoop in at any time and seize the
22 stock of this debtor and completely end things. Premised upon the legal authority that follows, a
23 Chapter 11 Trustee should be appointed with a strict view of marketing this business or the case
24 should dismiss for cause well-documented herein.

1 WHEREUPON, having so stated the State PRAYS in the alternative, that either Chapter 11
2 Trustee be appointed or the case be dismissed with prejudice.

3 DATED this 23rd day of November, 2016.

4 ROBERT W. FERGUSON
5 Attorney General

6 /s/ Zachary Mosner

7 ZACHARY MOSNER, WSBA No. 9566
8 Assistant Attorney General
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